

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

JAN 2005

REC'D 10 SEP 2004


Applicant's or agent's file reference P24533PC00	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/415) PCT	
International application No. PCT/ZA 03/00093	International filing date (day/month/year) 15.07.2003	Priority date (day/month/year) 18.07.2002
International Patent Classification (IPC) or both national classification and IPC A61K35/74		
Applicant AGRICULTURAL RESEARCH COUNCIL et al.		

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- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.
 - ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

- This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 23.01.2004	Date of completion of this report 08.09.2004
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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/ZA 03/00093

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I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-69 as originally filed

Claims, Numbers

1-22 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).
- (Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 5, 8, 11-12, 16, 18, 21

because:

☒ the said international application, or the said claims Nos. 5, 8, 11-12, 16, 18, 21 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-2, 3, 4, 6-7, 9-10, 13
Inventive step (IS)	Yes: Claims	
	No: Claims	1-2, 3, 4, 6-7, 9-10, 13
Industrial applicability (IA)	Yes: Claims	
	No: Claims	5, 8, 11-12, 16, 18, 21

2. Citations and explanations

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see separate sheet

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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/ZA 03/00093

Reference is made to the following document/s/:

- D1: WO-A-9113146
- D2: Journal Of Animal Science, New York, Ny, Us (1995), 73(1), 250-256
- D3: Journal Of Applied Microbiology (April 2002), 92, 753-758

Section III

With respect to claims 5, 8, 11-12, 16, 18 and 21 the attention of the Applicant is drawn to the fact that no unified criteria exist in the PCT for assessment of patentable inventions. The EPO, for example, considers that the whole set of claims, as far as they concern methods of treatment/diagnosis that may be practised on the human or animal body, are examined by the IPEA but relate to subject matter considered by the Examining Division at the EPO to be covered by the provision of Article 52(4) EPC. Consequently, in an eventual subsequent examination in the regional phase, these inventions would not be considered as being susceptible of industrial application.

Section V

1. Article 33(2) PCT
 - 1.1 Expressions like "biologically pure", "substantially the same", "very efficiently", relatively high growth rate" are so ambiguous and unclear that even novelty of present claims 1, 2, 3, 4, 6-7, 9-10 and 13 could be assessed (Article 33(2) PCT). In the absence of features having technical character defining the strain of the present application the bacterial strains of documents D1-D3 are considered novelty destroying to said claims.
2. Additional remarks
 - 2.1 Present claim 13 defines the subject matter for which protection is sought by the result to be achieved, which is not allowable (Article 6 PCT and Guidelines C-III, 4.7 PCT).
 - 2.2 Present claims 14-22 define the subject matter for which protection is sought by reference to the specification, which is not allowable (Article 6 PCT and Guidelines C-III, 4.10 PCT).

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